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10 ATTORNEYS FOR MOVANT

11  
12 **IN THE UNITED STATES BANKRUPTCY COURT**  
13 **DISTRICT OF ARIZONA**

14 In re:

15 Case # 3:12-bk-19862-GBN

16 Brooks Joel Eden and Natalie Jean Eden.  
17 Debtor.

18 Chapter 13 Proceedings

19 Sarah Ann Ranch Homeowners Assoc.,

20 **MOTION TO CONFIRM ABSENCE OF**  
21 **AUTOMATIC STAY TO ENFORCE POST-**  
22 **PETITION LIENS AND OBLIGATIONS**  
23 **WITHOUT VIOLATION OF AUTOMATIC STAY**

24 v.  
25 Brooks Joel Eden and Natalie Jean Eden.  
26 Respondent.

27 This Motion is filed by Sarah Ann Ranch Homeowners Association (“Sarah Ann  
28 Ranch”), through undersigned counsel in the above-captioned Chapter 13 case of Brooks  
29 Joel Eden and Natalie Jean Eden (“Debtor”). Pursuant to this Motion, Sarah Ann Ranch  
30 requests that the Court enter an Order confirming that the automatic stay of Bankruptcy  
31 Code §362(a) does not bar Sarah Ann Ranch from enforcing its rights and remedies in  
32 connection with homeowners association fees which have accrued post-petition and have  
33 been assessed against certain real property owned by Debtor.

1      **I. BACKGROUND**

2      1.      Debtors Brooks Joel Eden and Natalie Jean Eden are the record owners of  
3      Lot 516, Sarah Ann Ranch Unit I, according to Book 812 of Maps, Page 49, and  
4      Certificate of Correction recorded at Document No. 2007-0207642 and Document No.  
5      2007-0207645, records of the Office of the County Recorder of Maricopa County,  
6      Arizona ("Lot 516"). Lot 516 is subject to the terms and conditions of the Declaration.  
7

8      2.      Sarah Ann Ranch Homeowners Association, is a non-profit Arizona  
9      corporation subject to a Declaration of Covenants, Conditions and Restrictions  
10     ("Declaration"), February 21, 2006 in Document No. 2006-0235062, official records of  
11     Maricopa County, Arizona.

12     3.      Pursuant to Article 5, Section 5.1 of the Association's Declaration, each  
13     Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the  
14     deed or other instrument by which the Owner acquired ownership of the Lot, is deemed  
15     to covenant and agree to pay to the Association annual Assessments, special  
16     Assessments, and any applicable neighborhood Assessment and lot specific Assessments.  
17     Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall  
18     also be the personal obligation of the Owner of the Lot at the time when the Assessment  
19     became due.  
20

21     4.      Pursuant to Article 5, Section 5.9 of the Declaration, [a]ny Assessment, or  
22     any installment of an Assessment, not paid within 30 days after the Assessment, or the  
23     installment of the Assessment, first became due shall have added to it the greater of (i)  
24     interest from the due date of the rate at 10% per annum, or (ii) a late charge of \$15.00.

1 Any amounts paid by a Member shall be applied first to late charges or interest and then  
2 to unpaid principal.

3 5. Debtor in acquiring her Lot within Sarah Ann Ranch, took said Lot subject  
4 to the foregoing provisions of the Declaration and consented thereto making said lien a  
5 consensual lien. Debtor failed and refused to pay valid charges and delinquent  
6 assessments.

7 6. Debtor filed a voluntary petition under Chapter 13 of the Bankutcy Code on  
8 September 5, 2012 ("Petition Date")

9 7. To date, the Debtors have accrued a post-petition balance owed to the  
10 Association in the amount of \$2,396.06.

11 8. As of the date of this filing, Debtor's total payments made on Lot 516 since  
12 Petitin Date total \$0.00.

13 9. Debtor has failed to pay quarterly assessments, late fees, fines attorney  
14 fees and other charges owed to the Association pursuant to the Declaration.

15 10. Debtor remains the legal owner of the Lot and a Chapter 13 plan was been  
16 confirmed on December 26, 2013.

17 **II. LEGAL ANALYSIS:**

18 The automatic stay does not prevent Sarah Ann Ranch from enforcing its rights  
19 and remedies with respect to HOA Dues, which have been assessed after the Petition  
20 Date. The automatic stay only protects against acts to collect or recover pre-petition  
21 claims. See Liberty Cmt. Mgmt. v. Hall (In re Hall), 454 B.R. 230, 233 (Bankr. N.D. Ga.  
22 2011). Bankruptcy Code §362(a)(6) provides for a stay of "any act to collect, assess, or  
23 24

1 recover a claim against the debtor that arose *before* the commencement of the case under  
2 this title." 11 U.S.C. §326(a)(6) (emphasis added).

3 In In re Hall, a debtor purchased a condominium, which was subject to association  
4 assessments. Hall, 454 B.R. at 232. In 2007, the debtor filed a voluntary petition for  
5 relief under Chapter 13 of the Bankruptcy Code and a Chapter 13 plan was completed in  
6 2010. Id. Before the plan was completed, however, the debtor received communications  
7 from the Association regarding defaults in condominium assessments. Id. The debtor  
8 then filed a motion for contempt against the association for violation of the automatic  
9 stay. Id. The court held that the association's actions did not violate the stay. Id. The  
10 Hall court found that the debtor is not obligated to pay post-petition assessments at the  
11 time of filing because they do not exist at the time of filing and the association would not  
12 have the right to enforce payment at that time. Id. The court held that post-petition  
13 assessments are not claims within the meaning of Bankruptcy Code §101(5) because  
14 there is no enforceable obligation at the time of the debtor's filing. Id. at 233.  
15 Accordingly, the association's attempt to collect post-petition assessments was not an act  
16 to collect, assess or recover a claim that arose prior to bankruptcy filing. Id.  
17

18 Here, the post petition HOA dues have been assessed against the Debtor's  
19 property. The post-petition assessments are the personal obligation of the Debtor and are  
20 not subject to the automatic stay, which only applies to pre-petition claims. An  
21 affirmative covenant to pay homeowners' assessments do not arise from a contractual  
22 obligation, but from a function of property ownership. See e.g. Foster v. Double R.  
23 Ranch Ass'n (In re Foster), 435 B.R. 650, 658 (B.A.P. 9<sup>th</sup> Cir. 2010) The Declaration  
24

1 does not obligate the Debtor to pay assessments before they are due or for a fixed period  
2 of time. The assessments are a property interest that run with the land and become due  
3 because of legal ownership, not because of a contractual obligation prior to the Petition  
4 Date. See id. As such, the post-petition HOA assessments and other charges are not  
5 subject to the automatic stay and are collectible by Sarah Ann Ranch.

6 **III. Request for Relief**

7 **WHEREFORE**, Sarah Ann Ranch respectfully requests the Court to enter an Order  
8 granting the following relief:

9 1. Confirming that the automatic stay of Bankruptcy Code §362(a) does not  
10 bar Sarah Ann Ranch from enforcing its rights and remedies in connection with post-  
11 petition homeowners association fees assessed against Debtor's Lot;

12 2. Confirming all stays and injunctions in this case, including without  
13 limitation the automatic stay of Bankruptcy Code §362(a) do not apply to post-petition  
14 homeowners association fees assessed against Debtor's Lot so that Sarah Ann Ranch is  
15 entitled to enforce all its rights and remedies in connection with such homeowners  
16 association's fees; and

17 3. Granting such other and further relief as the Court determines is just and  
18 proper under the circumstances of this case

19 **DATED** this 31 day of July, 2014.

20 **MULCAHY LAW FIRM, P.C.**

21 /s/ Charlene Cruz /s/

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Charlene Cruz  
Attorney for Sarah Ann Ranch Homeowners  
Association

On 7/31/14, I served the foregoing documents described as **NOTICE OF MOTION FOR ORDER UNDER 11U.S.C. §362(C)(4)(A)(II) CONFIRMING ABSENCE OF AUTOMATIC STAY TO ENFORCE POST-PETITION LIENS AND OBLIGATIONS** on the following individuals by electronic means through the Court's ECF program:

JARED E. HOLLAND  
DECKER HOLLAND, PLLC  
15 East Cherry Ave., Suite 203  
Flagstaff, AZ 86001  
Counsel for Debtor

**I declare under penalty and perjury under the laws of the United States of America that the foregoing is true and correct.**

## MULCAHY LAW FIRM, P.C.

/s/ Charlene Cruz /s/

On 7/31/14, I served the foregoing documents described as **NOTICE OF MOTION FOR ORDER UNDER 11U.S.C. §362(C)(4)(A)(II) CONFIRMING ABSENCE OF AUTOMATIC STAY TO ENFORCE POST-PETITION LIENS AND OBLIGATIONS** on the following individuals by depositing true copies thereof in the United States mail at Phoenix, Arizona, enclosed in a sealed envelope, with postage paid addressed as follows:

U.S. TRUSTEE  
OFFICE OF THE U.S. TRUSTEE  
230 NORTH FIRST AVENUE, SUITE 204  
PHOENIX, AZ 85003

EDWARD J. MANEY  
101 N. FIRST AVE., SUITE 1775  
PHOENIX, AZ 85003

JARED E. HOLLAND  
DECKER HOLLAND, PLLC  
15 East Cherry Ave., Suite 203  
Flagstaff, AZ 86001

I declare under penalty and perjury under the laws of the United States of America that the foregoing is true and correct.

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/s/ Charlene Cruz /s/

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17 Debtor.

18 Chapter 13 Proceedings

19 Sarah Ann Ranch Homeowners Assoc.,

20 v.  
21  
**NOTICE OF MOTION FOR ORDER UNDER**  
**11U.S.C. §362(c)(4)(A)(ii) CONFIRMING**  
**ABSENCE OF AUTOMATIC STAY TO**  
**ENFORCE POST-PETITION LIENS AND**  
**OBLIGATIONS**

22 Brooks Joel Eden and Natalie Jean Eden.  
23 Respondent.

24  
**NOTICE IS GIVEN** that Sarah Ann Ranch Homeowners Association, through  
undersigned counsel, has filed a motion requesting an order confirming the absence of the  
automatic stay pursuant to 11 U.S.C. §362(c)(4)(A)(ii).

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**FURTHER NOTICE IS GIVEN** that pursuant to Local Bankruptcy Rule 4001-2(c), if  
no written objection is filed with the Court and a copy served on Movant, whose address  
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1 **WITHIN FOURTEEN (14) DAYS** of service of the Motion and Notice of Motion, the  
2 Court may enter an Order confirming absence of the automatic stay without further  
3 hearing or proceeding. Movant's proposed form of Order is attached hereto as Exhibit A.

4 **DATED** this 31 day of July, 2014.

5 **MULCAHY LAW FIRM, P.C.**

6 /s/ Charlene Cruz /s/

7 Beth Mulcahy  
8 Erin McManis  
9 Charlene Cruz  
10 Maureen Connolly  
11 Attorneys for Arrowhead Ranch Phase II  
12 Homeowners Association

13 On 7/31/14, I served the foregoing documents described as **NOTICE OF MOTION**  
14 **FOR ORDER UNDER 11U.S.C. §362(C)(4)(A)(II) CONFIRMING ABSENCE OF**  
15 **AUTOMATIC STAY TO ENFORCE POST-PETITION LIENS AND**  
16 **OBLIGATIONS** on the following individuals by electronic means through the Court's  
17 ECF program:

18 JARED E. HOLLAND  
19 DECKER HOLLAND, PLLC  
20 15 East Cherry Ave., Suite 203  
21 Flagstaff, AZ 86001 Counsel for Debtor

22 **I declare under penalty and perjury under the laws of the United States of America**  
23 **that the foregoing is true and correct.**

24 **MULCAHY LAW FIRM, P.C.**

25 /s/ Charlene Cruz /s/

26 On 7/31/14, I served the foregoing documents described as **NOTICE OF MOTION**  
27 **FOR ORDER UNDER 11U.S.C. §362(C)(4)(A)(II) CONFIRMING ABSENCE OF**  
28 **AUTOMATIC STAY TO ENFORCE POST-PETITION LIENS AND**  
29 **OBLIGATIONS** on the following individuals by depositing true copies thereof in the  
30 United States mail at Phoenix, Arizona, enclosed in a sealed envelope, with postage paid  
31 addressed as follows:

1 U.S. TRUSTEE  
2 OFFICE OF THE U.S. TRUSTEE  
3 230 NORTH FIRST AVENUE, SUITE 204  
4 PHOENIX, AZ 85003

5 EDWARD J. MANEY  
6 101 N. FIRST AVE., SUITE 1775  
7 PHOENIX, AZ 85003

8 JARED E. HOLLAND  
9 DECKER HOLLAND, PLLC  
10 15 East Cherry Ave., Suite 203  
11 Flagstaff, AZ 86001

12 **I declare under penalty and perjury under the laws of the United States of America  
13 that the foregoing is true and correct.**

14 **MULCAHY LAW FIRM, P.C.**

15 /s/ Charlene Cruz /s/  
16 \_\_\_\_\_

1 MULCAHY LAW FIRM, P.C.  
2 3001 E. CAMELBACK ROAD, SUITE 130  
3 PHOENIX, ARIZONA 85016  
4 (602) 241-1093 PHONE / (602) 264-4663 FAX  
5 E-MAIL: BMULCAHY@MULCAHYLAW.NET

6 BETH MULCAHY #017005  
7 ERIN E. McMANIS #026310  
8 CHARLENE CRUZ #026692  
9 MAUREEN CONNOLLY #030194  
10 ATTORNEYS FOR MOVANT

11

12 **IN THE UNITED STATES BANKRUPTCY COURT**  
13 **DISTRICT OF ARIZONA**

14 In re:

15 Case # 3:12-bk-19862-GBN

16 Brooks Joel Eden and Natalie Jean Eden.  
17 Debtor.

18 Chapter 13 Proceedings

19 Sarah Ann Ranch Homeowners Assoc.

20 **[PROPOSED] ORDER CONFIRMING ABSENCE**  
21 **OF AUTOMATIC STAY TO ENFORCE POST-**  
22 **PETITION LIENS AND OBLIGATIONS**

23 v.  
24 Brooks Joel Eden and Natalie Jean Eden.  
25 Respondent.

26 Sarah Ann Ranch Homeowners Association having filed its Motion for Order under 11  
27 U.S.C. §362(c)(4)(A)(ii) confirming absence of the Automatic Stay with respect to the  
28 hereinafter-described property and after the appropriate notice and opportunity for a  
29 hearing, no party in interest having objected to such relief, the Respondents having failed  
30 to plead or otherwise defend, and good cause appearing.

31 **IT IS THEREFORE ORDERED THAT:**

32 1. The Motion shall be, and hereby is, granted in all respects;  
33  
34 2. The Automatic Stay of Bankruptcy Code §362 (a) does not bar Sarah Ann  
35 Ranch Homeowners Association from enforcing its rights and remedies in

1 connection with homeowners association fees that have accrued post-  
2 petition and assessed against the Lot;

3 3. That upon filing of the instant case there was and continues to be no  
4 Automatic Stay pursuant to 11 U.S.C. §362(c)(4)(A)(ii) with respect to the  
5 property generally described as 17721 W. Voltaire Street, Surprise, AZ  
6 85388.

7 **IT IS SO ORDERED.**

8  
9 **SIGNED AND DATED ABOVE.**